

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

KEVIN P. ETZKORN, individually, and	)	
on behalf of all others similarly situated,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No.
	)	
3 DAY BLINDS LLC, a Delaware limited	)	
liability company doing business in	)	<b>JURY TRIAL DEMANDED</b>
Missouri as 3DB of MO LLC, its	)	
registered name,	)	
	)	
Defendant.	)	

**NOTICE OF REMOVAL**

Pursuant to 28 U.S.C. §§ 1331, 1441, and 1446, Defendant 3 Day Blinds LLC (“3 Day Blinds” or “Defendant”) hereby removes this action from the Circuit Court of St. Louis County, Missouri, where the action is now pending, to the United States District Court for the Eastern District of Missouri, and states as follows:

**A. This Court Has Federal Question Jurisdiction Over The Action**

1. On or about October 27, 2017, Plaintiff Kevin P. Etzkorn (“Plaintiff”) filed a putative class action petition in the Circuit Court of St. Louis County, Missouri against Defendant. *See* Case No. 17SL-CC04032, Circuit Court of the 21<sup>st</sup> Judicial District, St. Louis County, Missouri State Court (the “State Court Action”).

2. In the State Court Action, Plaintiff alleges that Defendant violated the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.* (the “TCPA”) contending that Defendant sent text messages to Plaintiff and other members of the putative class in

violation of “the express provisions of the TCPA, including, but not limited to, 47 U.S.C. § 227(b)(1).” *See* State Court Petition (hereinafter “Complaint”), ¶26.

3. Plaintiff, on his own behalf and purportedly on behalf of the putative class, seeks statutory damages and other relief for the alleged violations of 47 U.S.C. § 227(b)(3)(B). *See* Complaint, ¶22; *see also id.*, pp. 6-7 (“Demand for Judgment”).

4. In accordance with 28 U.S.C. § 1446(a), Defendant 3 Day Blinds has attached, as Exhibit A, a copy of Plaintiff’s summons and state court class action petition, which are the only process, pleadings, or orders that have been served upon Defendant.

5. Defendant 3 Day Blinds has not entered its appearance, filed a responsive pleading, or otherwise responded in the State Court Action.

6. 28 U.S.C. § 1441 provides that “any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.”

7. This Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1331 because it arises under the TCPA. Federal question jurisdiction exists when an action presents a claim “arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331. This Court has jurisdiction over this action under 28 U.S.C. § 1331, because Plaintiff’s claims arise under a federal statute, the TCPA.

8. The Supreme Court has held that federal question jurisdiction exists over private actions, like this one, brought under the TCPA. *Mims v. Arrow Financial Services, LLC*, 132 S. Ct. 740, 742 (2012).

9. In light of the Supreme Court's unanimous decision in *Mims* specifically finding federal question jurisdiction over claims arising under the TCPA, this action is properly removable to this Court. *See, e.g., St. Louis Heart Ctr., Inc. v. Vein Centers For Excellence, Inc.*, No. 4:12 CV 174 CDP, 2013 WL 6498245, at \*10 (E.D. Mo. Dec. 11, 2013) ("In *Mims*, the Supreme Court held that federal courts had federal-question jurisdiction over TCPA claims.").

10. The Eastern Division of the Eastern District of Missouri is the division and district in which Plaintiff's state court action is pending.

11. Venue is proper because the St. Louis County Circuit Court, Missouri is within the United States District Court for the Eastern District of Missouri, Eastern Division. *See* 28 U.S.C. §§ 105, 1441(a) and 1446(a).

**B. Removal Is Timely Under 28 U.S.C. § 1446(b)**

12. Plaintiff's summons and state court class action petition were served on Defendant 3 Day Blinds on November 7, 2017.

13. This Notice of Removal is timely pursuant to 28 U.S.C § 1446(b) because it is being filed "within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based." 28 U.S.C. § 1446(b); *see also Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 356 (1999) (holding that the thirty (30) day removal period does not begin to run until defendant is formally served); *Marano Enters. of Kansas v. Z-Teca Rests., L.P.*, 254 F.3d 753, 756-57 (8th Cir. 2001) (same).

14. Because Defendant 3 Day Blinds was served on November 7, 2017, the thirty-day time period continues through Thursday, December 7, 2017.

15. A copy of all process, pleadings, orders and other documents currently on file in the State Court Action at the time of removal are attached hereto as Exhibit B.

16. The materials in Exhibit B include a return of service confirming that Defendant 3 Day Blinds was served November 7, 2017. *See* Exhibit B, p. 18.

### **LOCAL RULES**

17. Pursuant to Local Rules 2.02 and 2.03, the Original Filing Form has been filed.

18. Pursuant to Local Rules 2.02 and 2.03, the Civil Cover Sheet has been filed.

19. Written notice of the filing of this Notice of Removal will be given promptly to Plaintiff and, together with a copy of the Notice of Removal, will be filed with the Clerk of the Circuit Court of St. Louis County, Missouri, as required by 28 U.S.C. § 1446(d).

WHEREFORE, Defendant 3 Day Blinds removes this action from the Circuit Court of St. Louis County, Missouri to the United States District Court for the Eastern District of Missouri, Eastern Division, and respectfully requests that this action proceed in this Court as an action properly removed.

Respectfully submitted this 6<sup>th</sup> day of December, 2017.

/s/ Glennon P. Fogarty  
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**ATTORNEYS FOR DEFENDANT  
3 DAY BLINDS LLC**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and accurate copy of the foregoing was mailed, postage prepaid on December 6, 2017, to:

Dennis Neil Smith, Jr.  
THE SMITH LAW FIRM, LLC  
231 S. Bemiston, Suite 800  
Clayton, MO 63105  
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*Attorney for Plaintiff*

/s/ Glennon P. Fogarty  
Attorney